

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

IN RE: . Case No. 06-10889 (MS)  
. .  
. .  
PITTRA G.B. . M.L.K. Federal Building  
INTERNATIONAL, INC., . 50 Walnut Street, 3rd Floor  
. Newark, NJ 07102  
Debtor. .  
. December 3, 2007  
. . . . . 1:18 p.m.

TRANSCRIPT OF HEARING  
BEFORE HONORABLE MORRIS STERN  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Trustee: Robertson, Frellich, Bruno & Cohen  
By: JAMES A. SCARPONE, ESQ.  
One Riverfront Plaza, 7th Floor  
Newark, NJ 07102-5497  
  
Hellring Lindeman Goldstein &  
Siegal LLP  
By: PATRICIA A. STAIANO, ESQ.  
One Gateway Center, 8th Floor  
Newark, NJ 07102  
  
Benjamin A. Stanziale  
By: BENJAMIN A. STANZIALE, ESQ.  
91 Main Street  
West Orange, NJ 07052-5403

Audio Operator: Mariela Primo

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(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (CONT'D):

For Merrill Lynch:

Bressler, Amery & Ross, P.C.  
By: GEORGE R. HIRSCH, ESQ.  
325 Columbia Turnpike  
Florham Park, NJ 07932

As an observer:

Saiber Schlesinger Satz &  
Goldstein, LLC  
By: VINCENT F. PAPALIA, ESQ.  
One Gateway Center  
13th Floor  
Newark, NJ 07102-5311

1 THE COURT: This United States Bankruptcy Court is  
2 now in session. The scheduled matters will be heard and fully  
3 considered. This is the one o'clock calendar, Pittra. We have  
4 two motions. Appearances, please.

5 MR. SCARPONE: James Scarpone, Robertson, Frellich,  
6 Bruno & Cohen for the trustee. Also here is Patricia Staiano  
7 from Hellring Lindeman, and the trustee, Benjamin Stanziale.

8 THE COURT: All right.

9 MR. HIRSCH: George Hirsch, Bresler, Amery & Ross for  
10 Merrill Lynch Business Financial Services, Inc.

11 MR. PAPALIA: Good afternoon, Your Honor. Vincent  
12 Papalia, Saiber Schlesinger. I'm here as an observer. I'm not  
13 participating in the motion.

14 THE COURT: Oh my goodness. Okay.

15 MR. PAPALIA: Thank you.

16 THE COURT: All right. Okay.

17 MR. SCARPONE: Excuse me, Your Honor. There was one  
18 other counsel who my secretary told me when she received word  
19 from him that he intended to appear today. But, he's not here  
20 and I'm not 100 percent sure if he's coming, so I think we can  
21 proceed. It's past the time, he was told what time it was.

22 THE COURT: All right. I mean, I --

23 MR. SCARPONE: That was Mr. Gleason who represents  
24 Empresas Lourdes in the larger claim.

25 THE COURT: All right. We'll keep him posted on

1 what's doing. All right. I'll hear the motion to dismiss  
2 first. I reviewed all the material that was submitted. Mr.  
3 Hirsch, why doesn't the declaration of Ms. Krellman (phonetic)  
4 sort of put to rest the issue of authorization to file the  
5 petition?

6 MR. HIRSCH: Your Honor, if the declaration of Ms.  
7 Krellman stood alone one could conclude that there was no  
8 reason to question whether or not the declaration was accurate,  
9 truthful. The history here, however, raises that question on  
10 Pages 3 and 4 of the reply declaration. I went through the  
11 facts and there was one that I left out and I just would go  
12 through those very quickly.

13 THE COURT: Sure.

14 MR. HIRSCH: And it's really up to the Court to  
15 decide whether there is a credibility issue here. We believe  
16 there is. First, there are these letters that purport to be  
17 resignations and sale of stock. However, subsequent -- that  
18 was in -- dated November 1, 2004, purportedly. Subsequent to  
19 that date, May 26, 2005, there's a financial statement which,  
20 on its face, is from Paulette Krellman, and it was submitted  
21 and it was presented to my client as purporting to be from  
22 Paulette Krellman, and it states that she owns the stock and  
23 continues to be a partner, member or officer of Pittra G.B.  
24 International, Inc. And that is -- that document is attached  
25 to the initial filing.

1           So, that document, if Paulette Krellman signed it, is  
2 inconsistent with the resignation letter and sale letter. And  
3 if Mr. Kupperman did it for Ms. Krellman it's almost  
4 inconsistent with the resignation and sale letter.

5           At the same time, and this is what I left out and  
6 it's attached as Exhibit F to the initial declaration, Mr.  
7 Kupperman provided a financial statement in May of 2005. It  
8 was actually received, I think, at the beginning of June. It's  
9 Exhibit F. And Mr. Kupperman does not reflect the ownership of  
10 the Pittra stock that he purportedly acquired in November of  
11 2004. So, that Kupperman financial --

12           THE COURT: Why should I focus on the stock at all?

13           MR. HIRSCH: It's because the sale of the stock and  
14 the resignation as a director were purportedly contemporaneous  
15 and presumably connected with each other.

16           THE COURT: Two different transmissions.

17           MR. HIRSCH: On the same date, the same time, the  
18 same formal letter.

19           THE COURT: Okay. So, you say it's a credibility  
20 issue. Okay. I hear you.

21           MR. HIRSCH: Okay.

22           THE COURT: I understand the shadows, but again, you  
23 may have -- you know, stock is a funny thing in terms of  
24 declaration of whether you own it or not. Was it transferred  
25 on the books? You know, you can have --

1 MR. HIRSCH: Right.

2 THE COURT: -- shades of stock ownership. In  
3 addition, the statement, although I, you know, I agree that  
4 you've, in this sense, have sort of the higher hand in the  
5 argument on -- just on the face of the document, the personal  
6 financial statements submitted. It doesn't say director in the  
7 question that is answered by the purported submitter, Ms.  
8 Krellman.

9 MR. HIRSCH: Your Honor, I'm not -- I want to make  
10 our position clear.

11 THE COURT: Go ahead.

12 MR. HIRSCH: We're not, in a sense, prosecuting this  
13 motion. We are calling these facts to the attention of the  
14 Court. We believe that notwithstanding the declaration, that  
15 because of the other documents, even viewed with the  
16 declaration, there are sufficient inconsistencies that there is  
17 a credibility issue that -- and that this can not be decided  
18 based on, well, there are all these documents, but she  
19 submitted a declaration that, you know, now she says this is  
20 the way it was.

21 THE COURT: Is there any reason to believe that if  
22 she were a director, even through today, that she wouldn't  
23 ratify what happened in terms of the authorization of the  
24 petition?

25 MR. HIRSCH: I have no way of knowing that one way or

1 the other. I do note that in her 2004 examination in her own  
2 case -- and I asked her several times -- she purported not to  
3 remember whether she was a director or shareholder of Pittra  
4 G.B. International, Inc. And what I tend to think about these  
5 defendants is that what's convenient at the time the question  
6 is asked? I think that she would rather not say that I lied in  
7 a financial statement to a banking institution. So, she says,  
8 "I didn't sign that one." But, whether or not she signed the  
9 resignation is in serious question, and it really is a  
10 credibility question from our point of view. But, that's the  
11 Court's call.

12 THE COURT: Okay. But, let me just -- because we  
13 may -- we have seen the statement, for example, of Mr. Becker  
14 as to the use of his letterhead to forge a submission to a  
15 would be lender or a lender. And so, I understand that there's  
16 not exactly a pristine background here.

17 On the other hand, the question is whether there's  
18 authority for the filing of this petition, and that's the  
19 narrowest of questions. And for a creditor a year later --  
20 more than a year. The petition was filed 2/06. To say well,  
21 you know, let's throw the case out, it's not as though Ms.  
22 Krellman is getting up saying, you know, I was a director, and  
23 I didn't attend that meeting, and there was no quorum, and it's  
24 not authorized, and this case should be dismissed.

25 MR. HIRSCH: I understand.

1 THE COURT: So, there's sort of an -- the Court  
2 has -- it's also not the case that Ms. Krellman is saying today  
3 that whether or not she wants the case dismissed, that she  
4 wouldn't, if she were director, ratifying that. And I know  
5 that there's sort of a speckled history with respect to  
6 ratification, but this is a court of equity almost two years  
7 into a case, and for this highly technical, though  
8 appropriate -- it's an appropriate objection --

9 MR. HIRSCH: When you say -- you mean -- you said --  
10 you used the word -- you said a an, a-n, appropriate?

11 THE COURT: It is appropriate.

12 MR. HIRSCH: Okay.

13 THE COURT: Yes, no, no, I --

14 MR. HIRSCH: It sounded like inappropriate --

15 THE COURT: No, no, no. Inappropriate I say louder.  
16 You know, appropriate I say softly. It's an appropriate -- it  
17 is an appropriate motion, but I think that once Ms. Krellman  
18 came forward and said that she had transferred the stock, but  
19 most importantly, because the stock isn't really the issue, in  
20 a separate transmission that she had resigned as director, and  
21 that there is on the other side of it a series of e-mails, one  
22 or two around the date of the petition between Kupperman and  
23 the Becker Meisel office, sort of reaffirming that.

24 And so, you've got two things on your side of the  
25 ledger which is this now disputed financial statement for



1 whatever that's worth, and the statement in the -- statement of  
2 financial affairs by Ms. Krellman which -- she doesn't have a  
3 start date for her share ownerships.

4 MR. HIRSCH: She doesn't have an end date.

5 THE COURT: So, she doesn't have an end date either.  
6 So, she left that date line out. Again, your point may be  
7 correct that not answering and committing to a lot of facts is  
8 probably a good way to dodge one or another arrow, liability,  
9 whatever, but on the face of what we have here in answering the  
10 very, very narrow question of authorization, I can't see how we  
11 could say that this is not an authorized petition, and I can't  
12 dismiss it. So, I'm going to have to deny your motion.

13 MR. HIRSCH: All right. Well --

14 THE COURT: I mean --

15 MR. HIRSCH: I guess you ruled, so -- I mean, there  
16 were a couple of things that I would say; one is that --

17 THE COURT: Go ahead.

18 MR. HIRSCH: -- that the question of authorization  
19 doesn't depend on who's raising it and when, and secondly --

20 THE COURT: But, there are cases that do --

21 MR. HIRSCH: I understand, but I --

22 THE COURT: -- that do go to the issue of -- sort of  
23 one's motivation. I mean, why do you want this case dismissed?  
24 So, you don't have the adversary proceeding staring you in the  
25 face.

1 MR. HIRSCH: We -- there is no adversary proceeding.

2 THE COURT: I'm saying the potential.

3 MR. HIRSCH: Frankly, Your Honor, we are not  
4 concerned, and if the trustee and his counsel want to exert  
5 more effort and run up bigger expenses in what is likely to be  
6 a no-asset case where they're staring at, you know, the big  
7 goose egg, you know, that's really up to them and, you know,  
8 I'm in a position where, okay, we'll deal with it.

9 THE COURT: Okay.

10 MR. HIRSCH: But, the only other thing I want to say  
11 is --

12 THE COURT: Sure.

13 MR. HIRSCH: -- the Kupperman e-mails, you know,  
14 Kupperman's the kind of guy that, apparently the facts seem to  
15 suggest, that if you say to Kupperman, listen, I need a  
16 document that shows that you have the authority to do this,  
17 he'll say, oh, no problem, I have it. And he'll wheel it up  
18 whether or not it's authentic. But, I --

19 THE COURT: Yes. If it were only that. But, now you  
20 have Ms. Krellman in a declaration. I mean, there it is. If  
21 you put her on the stand are we going to get a different  
22 answer?

23 MR. HIRSCH: I doubt you'll get a different answer  
24 and it's just a question of whether Your Honor feels the need  
25 to assess her credibility. Your Honor apparently doesn't and I

1 accept that.

2 THE COURT: Okay. All right. Thank you. Is there  
3 anything left of the motion with respect to discovery?

4 MR. SCARPONE: Judge, we have a motion for the  
5 discovery and Mr. Hirsch has an argument about why some of that  
6 discovery should not be allowed.

7 THE COURT: All right. I didn't know if there was  
8 still a dispute because I saw a letter from Mr. Hirsch that  
9 said 1368 pages had been submitted roughly contemporaneously  
10 with the motion being scheduled.

11 MR. SCARPONE: There's two issues, Judge.

12 THE COURT: Production of the officer and the --

13 MR. SCARPONE: Witness and the operating manuals that  
14 tell us what the standard procedure is which makes it possible  
15 for us to understand what this stack -- and the stack's about  
16 that high, Judge. He sends a lot of paper. There isn't a  
17 staple or a paperclip in the pile. Now, that tells you  
18 something, Judge. Production without staples and paperclips is  
19 always the key indicator, Judge.

20 THE COURT: Yes. I certainly saw no contempt in this  
21 until you pointed out that he wouldn't supply the stapler or a  
22 paperclip, but look, it's -- I think that you've pushed the  
23 issue of the 2004 pretty much to its limit. If, at this point,  
24 you want to file the adversary proceeding and have discovery on  
25 that basis, that's more appropriate, but go ahead.

1 MR. SCARPONE: Judge, let me address that for a  
2 moment because I have a fundamental disagreement with Mr.  
3 Hirsch. I mean, just as on the last motion, Mr. Hirsch  
4 confuses Mr. Hirsch confuses credibility with evidence. You  
5 know as the old saying goes, even the broken clock is right  
6 twice a day. Okay, just because Artie Kupperman has lied in  
7 the past doesn't mean he's lying now.

8 Proof that he is lacking in fundamental credibility  
9 comes easy in this case. We gave it to him. We would've  
10 wanted -- it was the trustee who found the evidence of the  
11 lying here, and we immediately gave it to the secure lenders  
12 who were still advancing money to him at the time. But, proof  
13 that Artie Kupperman has in the past lied, committed frauds,  
14 served time in prison for embezzlement doesn't mean or doesn't  
15 equate to proof of his authorization of filing a bankruptcy  
16 petition.

17 Now, likewise, on the discovery motion, we -- I  
18 believe firmly, get your facts first before you file a  
19 pleading. Don't go running off and starting adversary  
20 proceedings. Rule 2004 provides a procedure by which a trustee  
21 can do a fundamental investigation into the assets and the  
22 business affairs of a debtor.

23 And what we proposed to do here was, I believe, very  
24 much in line with the basic purpose of that rule. We want to  
25 find out whether there is a basis to challenge their lien.

1 Before we challenge it, not challenge first, find out later  
2 whether you have any facts that support your position. We  
3 represent the trustee, not the debtor who dealt with him. Not  
4 the man who deceived this lender for so many years. We  
5 represented trustee.

6 THE COURT: But, what is the, as you see it today,  
7 and if you choose, and I use that term advisedly, if you choose  
8 to advance it, what is your theory in challenging or  
9 potentially challenging their lien? I mean, you've got, I  
10 assume, and I may be wrong on this, and the lack of separation  
11 by whatever folder or staple or paperclip may make a  
12 difference, but --

13 MR. SCARPONE: Obviously, Judge --

14 THE COURT: -- are you able to look at the loan  
15 documents? I mean, is it a question of loan documentation? Is  
16 it a question of defection? Is it a question of signature?  
17 What's the issue on the lien? A question of consideration?

18 MR. SCARPONE: None of the above.

19 THE COURT: Value? None of the above.

20 MR. SCARPONE: None of the above.

21 THE COURT: Okay.

22 MR. SCARPONE: Where I start is a question Your Honor  
23 asked the first time we set foot in this courtroom on this  
24 case.

25 THE COURT: We're not going to talk about the rabbit

1 again. You catch the rabbit first. I don't --

2 MR. SCARPONE: I don't recall that, Judge, but --

3 THE COURT: -- know if you recall that.

4 MR. SCARPONE: -- that's not what I'm talking about.

5 THE COURT: Well, that was Mr. Hirsch's point.

6 MR. HIRSCH: And, Your Honor --

7 THE COURT: Let us first catch the rabbit before we  
8 cook it. Quoting a barred David Raven.

9 MR. HIRSCH: The rabbit's long gone, Your Honor.

10 THE COURT: Okay.

11 MR. SCARPONE: Judge --

12 MR. HIRSCH: And Mr. Papalia will probably join me in  
13 that.

14 MR. SCARPONE: Judge --

15 THE COURT: Go ahead.

16 MR. SCARPONE: -- what I'm talking about is a comment  
17 Your Honor made the first time we were here. And we advised  
18 the Court in the context of a totally different motion that the  
19 debtor had -- someone had created totally fraudulent financial  
20 statements; opinion letters from counsel, phony documents from  
21 a bank indicating a \$10 million escrow account on a closing for  
22 the sale of the business. I mean, it was so much fraud it was  
23 funny. It was comical. And that, in fact, Merrill Lynch, the  
24 secured lender, had been advancing funds and, in fact, even  
25 increased the debtor's line of credit after the debtor had

1 ceased doing business and transferred all of his assets to  
2 another entity.

3           And Your Honor looked at us and said -- or, looked at  
4 Mr. Hirsch, actually, as I recall, and said, "Mr. Hirsch, what  
5 was Merrill Lynch doing here?" Well, that question has stuck  
6 with us, not just because the Court said it, but because it's a  
7 fundamental question. How could this happen? This is a court  
8 of equity. We're not challenging the -- we're not contesting  
9 that they loaned money to this debtor. What we're questioning  
10 is the enforceability of their lien at this point in time given  
11 their apparent complete disregard of a series of glaring red  
12 warning lights here where their failure to do anything that  
13 comports with normal lending practices in financial  
14 institutions.

15           The trustee, in 20 minutes on his computer, found out  
16 that Arthur Kupperman had served time for embezzlement. That  
17 he had just come out of a personal bankruptcy. Merrill Lynch  
18 didn't know. They didn't even know that this case had been  
19 filed until we told them. Till they got -- they got a Rule  
20 2004 notice from us years ago asking for the loan documents.  
21 That's how they learned of the bankruptcy filing. They  
22 didn't -- they were --

23           THE COURT: Okay. But, let's assume something.  
24 Let's assume you got the -- their guidebook, you know, the Boy  
25 Scout manual of Merrill Lynch which says specifically, thou

1 shalt not make a loan to anyone who has been in bankruptcy  
2 within the last X months, forgetting about what the bankruptcy  
3 code --

4 MR. SCARPONE: Your Honor, let me give you a better  
5 example --

6 THE COURT: Let me just go down the list.

7 MR. SCARPONE: -- of factual --

8 THE COURT: Have all this stuff, and they violated  
9 every one of their own internal rules. Every one. And they  
10 made the loan, and the loan was properly documented and it was  
11 properly perfected, so you have both the grant and the  
12 perfection, if there is any collateral, where's the cause of  
13 action?

14 MR. SCARPONE: The cause of action is an equitable  
15 action that says they're not entitled to the equitable remedy  
16 of foreclosure. They're not entitled to enforce their lien.

17 THE COURT: And where does that come from

18 MR. SCARPONE: It comes from --

19 THE COURT: -- stupidity? I mean, they were stupid  
20 and, therefore --

21 MR. SCARPONE: Not that they were stupid --

22 THE COURT: -- as a stupid secured creditor or would  
23 be secured creditor you can't be paid?

24 MR. SCARPONE: They were reckless.

25 THE COURT: Reckless? In making a loan?



1 MR. SCARPONE: Yes. And --

2 THE COURT: Okay.

3 MR. SCARPONE: -- reckless to the point where they  
4 should -- not that they're not entitled to a claim. Sure, they  
5 have a claim, but they're not entitled to the equitable remedy  
6 of foreclosure because they've just gone too far. They just  
7 ignored all normal banking procedures. That would be the  
8 theory. I don't know that those facts are true, Judge. That's  
9 why we want the discovery.

10 It's a rather unusual claim. I would acknowledge  
11 that. Do I have a lot of case law for you at this point in  
12 time? No. I haven't done the research yet. I want to find  
13 out what the facts are. But, Judge, for example, the factual  
14 example I would look at here is another one that Your Honor  
15 just mentioned; the opinion letter from Ben Becker.

16 Now, Merrill Lynch had requested that opinion letter  
17 because there was an issue involving certain customs  
18 payments -- I'm sorry, I didn't hear that.

19 THE COURT: I didn't hear anything, so --

20 MR. SCARPONE: Merrill Lynch requested it. Mr.  
21 Kupperman brings them a letter. They don't get the letter from  
22 Ben Becker, they get it from Mr. Kupperman who says I'll get  
23 you an opinion letter from my client -- my counsel, I mean.  
24 Apparently, that could happen. We don't know the particulars.  
25 Again, we need the discovery.

1 But, the letter comes to Mr. Kupperman on its face.  
2 It's addressed to him, and he delivers it to Merrill Lynch.  
3 Does Merrill Lynch call Ben Becker? No. Had they called him,  
4 they would've known the truth. And the same principle applies  
5 to the accountant's financial statements. They get an audited  
6 financial statement which shows 50 million plus in sales for  
7 this company. Profitable, healthy company. Did Merrill Lynch  
8 ever call the accountant? No. I called the accountant as soon  
9 as I saw that statement --

10 THE COURT: Let's assume for argument's sake that you  
11 have articulated a cause of action. I'll sort of skip that  
12 whole point. We'll assume that we've got a new kind of lender  
13 liability, recklessness cause of action. What're your damages?  
14 That they gave you money?

15 MR. SCARPONE: I was asking --

16 THE COURT: That they gave your predecessor money?

17 MR. SCARPONE: But, you see, Your Honor mislabeled my  
18 cause of action and thereby distort it.

19 THE COURT: Go ahead.

20 MR. SCARPONE: It's now a lender liability claim.  
21 All I'm doing is saying this is an application to have them  
22 come in and prove the validity and enforceability of their  
23 lien. Then we'll fight about who owns the assets that are  
24 currently being attacked by Merrill --

25 THE COURT: Are there assets? Well, that's what I

1 wanted to know. Are there --

2 MR. SCARPONE: They've attached things. Merrill has.

3 So has Chase. There are assets that have been attached --

4 THE COURT: Assets in this debtor or claimed by

5 this --

6 MR. SCARPONE: Not in the debtor --

7 THE COURT: -- claimed by the debtors?

8 MR. SCARPONE: No, no, no, no. These are assets that

9 would be the subject of our (indiscernible) transfer action.

10 They're assets of PGB International, the other entity that

11 Arthur Kupperman set up. The one that borrowed from Chase.

12 THE COURT: And where is that cause of action?

13 MR. SCARPONE: That's before Judge Cavanaugh.

14 THE COURT: And the trustee's a party to that?

15 MR. SCARPONE: No. The trustee's not a -- we have --

16 there are two causes of action. There's one in this court,

17 that's the trustee's cause of action against PGB.

18 THE COURT: Okay.

19 MR. SCARPONE: Then there is the cause of action

20 brought by the two banks; by Merrill and by Chase. I don't

21 know whether it's two separate cases -- I believe it is --

22 before Judge Cavanaugh in the district court in which they have

23 obtained writs of attachment and other extraordinary remedies.

24 THE COURT: All right. So, your request for relief

25 would be a function of knocking out their lien in this case in

1 the adversary proceeding in the bankruptcy is premised on  
2 Merrill Lynch disregarding all of its own guidelines and  
3 recklessly or worse, making a loan to the debtor?

4 MR. SCARPONE: Now, that would not disallow their  
5 claim, and it wouldn't be a cause of action for damages against  
6 them because they have -- they did loan the money. All we  
7 would say is they're not entitled to the equitable remedy of  
8 enforcing their lien of foreclosure on their lien.

9 Now, to the extent that we can trace the assets  
10 through to PGB and say those were really the assets of Pittra,  
11 they would not come ahead of us -- not come ahead of the  
12 trustee. And the trustee would be able to assert for the  
13 benefit of the creditors of Pittra. The case has a history  
14 that I think cannot be ignored, Judge, and that is that for a  
15 couple of years before the bankruptcy was filed there was  
16 pending fraudulent transfer litigation brought by these two  
17 major creditors, Empresas Lourdes. And only when that  
18 litigation started getting to the point where the plaintiff  
19 started proving their claims, then all of a sudden there was a  
20 bankruptcy petition.

21 Oddly enough, Yenti and Empresas Lourdes withdrew  
22 their case, recognizing that the trustee would pursue the  
23 assets. This is one of a more serious points with the motion  
24 to dismiss which, of course, Your Honor's already ruled on and  
25 I'm not rearguing it. But, they withdrew it in reliance of

1 this proceeding and now dismiss this proceeding, and where were  
2 they? And the answer is barred by a statute of limitations.

3 Factually, this is, shall we say, an interesting case  
4 which means, usually, messy. Difficult beyond a level at which  
5 it can be economically and efficiently handled. As Mr. Hirsch  
6 said, on its face right now it's a no-asset case. Does that  
7 mean a really smart trustee just walks away from it and says,  
8 eh?

9 THE COURT: Well, see, that's why I brought up the  
10 rabbit because I asked early on whether the trustee was  
11 carrying the water for Merrill Lynch, and that caused Mr.  
12 Hirsch to pop up and say look, let's develop the pot first, the  
13 rabbit, and then we'll decide how to divide it. And I thought  
14 that that would generate some light and some kind of  
15 arrangement that would avoid all the expense, or much of it, or  
16 put it on a party that had great assets, Merrill Lynch, in  
17 favor of their pursuing a position. But, apparently, there's  
18 just World War III and there's no coming together.

19 MR. SCARPONE: Let me address that, Judge, because it  
20 is a central point in this case. That's what I thought, also.  
21 That's what the trustee thought. We all thought that. And it  
22 wasn't just Merrill, it was Chase also because they had been  
23 defrauded also in a different way. And it was the trustee who  
24 started the real discovery here, who started uncovering the  
25 facts and then we investigated further. And as soon as we

1 learned these things we immediately notified Merrill and Chase.  
2 When I say learned these things, I mean about the fraudulent  
3 financials, et cetera.

4           We were told -- and just as Your Honor has said, and  
5 it made perfect sense -- let the two banks pursue the more  
6 aggressive remedies that they can afford to pursue and that  
7 they have to pursue. They've both been defrauded. And were  
8 assured, don't worry. We won't forget the trustee. We won't  
9 forget Yantai and Empresas Lourdes who carried the ball for two  
10 years before the bankruptcy was filed while the fraud was being  
11 perpetrated on Merrill and Chase. It was Yantai and Empresas  
12 Lourdes who were litigating with Arthur Kupperman and Pittra  
13 and PGB to try to get these assets back where they should be,  
14 paying the creditors that should've been paid years ago.

15           So, we were assured, sure, let's see if we can  
16 recover anything here. And recovery always meant recovery from  
17 the individuals, including Paulette Krellman and Ross Brown, as  
18 well as Arthur Kupperman. And that's -- Mr. Brown is  
19 represented by Mr. Papalia here. And those discussions have  
20 progressed. And we've been on the fringe of them, so to speak.  
21 And I've spoken to Mr. Hirsch, to John Longhist (phonetic) and  
22 the people from Herrick Feinstein who represent Chase with Mr.  
23 Papalia. There's Fred Pollock (phonetic) who represents  
24 Paulette Krellman. No one has made any significant progress  
25 with Arthur Kupperman or his attorneys, and Mr. Kupperman has,

1 as we say, a bigger profit. And he's taking the Fifth  
2 Amendment as to virtually everything. Well, never mind the  
3 virtually.

4 THE COURT: Well, what's on for trial on the 13th and  
5 14th?

6 MR. SCARPONE: That is our fraudulent transfer case.  
7 That's the case that we've picked up from Yantai and Empresas  
8 Lourdes.

9 THE COURT: Right. Is that ready to go forward?

10 MR. SCARPONE: Not really, Judge. I have a  
11 deposition scheduled for tomorrow with Michael Rosenbaum from  
12 Budd Larner. Budd Larner was counsel to Pittra, later to PGB,  
13 also Mr. Kupperman. In fact, there's a family relationship  
14 between Mr. Kupperman and Mr. Rosenbaum. I believe they're  
15 cousins. And since we can't get any testimony out of Mr.  
16 Kupperman, we'll try this other avenue to find out whether  
17 there are assets.

18 What happened to all the money? I mean, between  
19 Merrill and Chase, \$7 million -- more than seven. Seven and a  
20 quarter I believe is the outstanding balance between the two of  
21 them -- went into this company and there were sales and there  
22 was cash flow. What happened to it all?

23 THE COURT: The case that is on for trial this month  
24 runs to one degree or another on the same track or parallel to  
25 what you're presenting to Judge Cavanaugh. Is that the case,

1 or not at all? There's no --

2 MR. HIRSCH: The -- first of all, the Empresas  
3 Lourdes did not dismiss their fraudulent conveyance action, and  
4 they, in fact, went to Judge Cavanaugh, literally copying the  
5 papers that Michael Connolly and I had prepared at our office  
6 and got their own writs of attachment. Just took our brief and  
7 put different names in. But, our writs are primarily against  
8 the individuals. We don't think PGB has anything. Chase had  
9 the first lien there, and that's all been liquidated and they  
10 got something.

11 THE COURT: My question is really designed --

12 MR. HIRSCH: But, the -- but, it's not the same, but  
13 our case is -- we got -- we have summary judgment on the  
14 guarantees.

15 THE COURT: I got you. But, let me just try this.

16 MR. HIRSCH: We're --

17 THE COURT: Let me just try this. Let me just try  
18 this on for size because, you know, you made the point which is  
19 you made it in, you know, a different way, but how much time  
20 and money is going to be spent on this and, you know,  
21 particularly the trustee. You know the position the trustee's  
22 in. Is there any reason for this Court to try to knit you  
23 together in a settlement at this time, or am I, you know, is it  
24 just a pipe dream?

25 MR. HIRSCH: Well, Your Honor, Mr. Papalia has been



1 partaking of that pipe for quite some time with Magistrate  
2 Arleo who has offered, and in fact, told us that she intends to  
3 try to do that if there's no reason not to come the next status  
4 conference which is by telephone on the eighteenth. She's  
5 going to set a date to try to do that.

6 But, the problem is that -- from my client's point of  
7 view -- the trustee is looking for two big a portion of a pot  
8 that a) doesn't quite exist yet, and b) is a whole lot smaller  
9 than, you know, everybody would hope, and --

10 THE COURT: But, that's just a matter of formula  
11 and --

12 MR. HIRSCH: Right.

13 THE COURT: -- and it seems to me, rather than, for  
14 example, I don't know how you view this deposition that will be  
15 taken tomorrow in terms of substance in your case. You may say  
16 it has no meaning at all. But, maybe it does, and here you've  
17 got competent counsel -- more than competent counsel. You've  
18 got someone who just won't give up and knows what he's doing,  
19 and that transcript may well benefit you.

20 Now, I'm not asking you to pay for it. I'm just  
21 asking you to consider that kind of cooperation. And the  
22 trustee, in standard bankruptcy fashion, is asking for  
23 recompense. And if it's in a formula, why not? And --

24 MR. HIRSCH: Your Honor, we would -- and we've --  
25 what's going on here is, we have a motion to compel, and we're

1 being asked --

2 THE COURT: To compel settlement.

3 MR. HIRSCH: No, but --

4 THE COURT: Okay. I misread it.

5 MR. HIRSCH: Well, you have a motion to compel, and  
6 the motion is asking for something that there's no conceivable  
7 way it could bear on anything, whether or not -- you know, what  
8 our -- we gave them all the loan documents, the entire credit  
9 file, the underwriting file.

10 THE COURT: I'm more than willing to talk about the  
11 motion --

12 MR. HIRSCH: Okay.

13 THE COURT: -- and to decide the motion. But, before  
14 we sort of get to that issue which may be the lesser important  
15 issue, I'm, you know, what're we doing here?

16 MR. HIRSCH: I'll tell you the unfair position you're  
17 putting me in.

18 THE COURT: Go ahead.

19 MR. HIRSCH: The unfair --

20 THE COURT: I'll hear you.

21 MR. HIRSCH: -- position you're putting me in is that  
22 to the extent that I seem resistant to being cooperative.  
23 Whether or not my resistance is well grounded, that plants deep  
24 in the recess of a human being, which you are, subconscious, a  
25 sort of, well, maybe if I push this way, and it disadvantages

1 me on the issue of the motion. And that's the very reason --

2 THE COURT: Let me disabuse you, then. I'll disabuse  
3 you.

4 MR. HIRSCH: Fine.

5 THE COURT: I'm going to deny his motion.

6 MR. HIRSCH: Okay.

7 THE COURT: I'm denying his motion --

8 MR. HIRSCH: We're always happy --

9 THE COURT: -- period.

10 MR. HIRSCH: We're always happy to talk to try to  
11 resolve things, but my client's reaction to the trustee's  
12 demand was, it's not in the ballpark.

13 THE COURT: Just the way I denied your motion.

14 MR. HIRSCH: It's not in the ballpark. What the  
15 trustee was looking for was --

16 THE COURT: But, now we've -- now you've -- now let's  
17 sort of get to the (indiscernible). Mr. Papalia, you had --

18 MR. HIRSCH: Are we going to go off the record?  
19 Because if --

20 THE COURT: No, no. We're not off the record.

21 MR. HIRSCH: Well, then, I can't put numbers. I  
22 can't say what he demanded and --

23 THE COURT: And I don't want you to. Mr. Papalia,  
24 anything that you want to add to this by way of calming oils?

25 MR. PAPALIA: Yes, Your Honor. Your Honor, I was

1 here for two reasons; because there's a trial scheduled on the  
2 13th and the 14th, and the other reason was in the hope that we  
3 could get everyone together to have a settlement discussion  
4 and, on behalf of Mr. Brown, and I know I speak for the other  
5 defendants, we would welcome the Court's involvement, or as Mr.  
6 Hirsch said, Judge Arleo has scheduled a conference for the  
7 eighteenth which was based in part on the resolution of the  
8 motion to dismiss, or how it was resolved, and now it's been  
9 resolved. And she indicated a willingness to conduct a  
10 settlement conference with all parties, and if it was okay with  
11 the parties, to invite the trustee. And I think that's what  
12 has to happen off the record, on the record.

13 THE COURT: Okay. But, let me say this so that  
14 we -- fine. And I appreciate it. And I certainly am grateful  
15 to Judge Arleo for her involvement. The fact that I'm denying  
16 the motion is on -- is not an indication of how I would rule on  
17 that motion in an adversary proceeding with respect to an  
18 application for exactly the same guidebook or whatever you want  
19 to call it -- their handbook or access to that same, or if it's  
20 not an identified, a class of bank officer.

21 MR. HIRSCH: It's not an indication either way, I  
22 take it.

23 THE COURT: That's right.

24 MR. HIRSCH: Okay.

25 THE COURT: And so, if you're going to push Mr.

1 Scarpone to file that adversary proceeding, the chips are going  
2 to fall where they fall on discovery. Again, it seems to me  
3 that cooler heads ought to prevail. And I truly believe that  
4 we have only cool heads here. And so, you people are going to  
5 at least make your best effort to resolve it. And nobody's  
6 putting a gun to anybody's head. It is what it is. It hasn't  
7 changed dramatically since the argument on the initial  
8 pleadings.

9 But, I must say that at that time, I anticipated that  
10 there'd be some sensible cooperation between Merrill Lynch and  
11 the trustee, and some understanding of what would happen if  
12 there were, and there may never be, a jackpot to divide.

13 MR. HIRSCH: I think there's one factor that hasn't  
14 been mentioned and I'm remiss in not mentioning it, and that is  
15 that one of the sort of preconditions to any of that really  
16 working out was that Merrill Lynch and Chase got on the same  
17 track and we've been cooperative and not really fighting with  
18 each other, but we've been unable to get the banks together to  
19 finalize --

20 THE COURT: No, but going back to them with a rousing  
21 victory where you, you know, you've won that discovery motion,  
22 I'm sure they're going to bend it this time. You know, you can  
23 go back and show them the strength and why you're going to be  
24 so influential. But, that's all I can -- is there anything  
25 that the parties want me to do other than just to keep my hands

1 off and leave it to the good offices of Judge Arleo and,  
2 presumably, adjourn the 13th and 14th?

3 MR. SCARPONE: Judge, may I just have one moment? I  
4 want to ask Mr. Papalia a question before I respond to your  
5 other question.

6 THE COURT: Go ahead. Do you want me to --

7 MR. SCARPONE: No, just in -- I need, like, a few  
8 seconds.

9 THE COURT: Sure. Take your time. This will give me  
10 a chance to talk to Ms. Staiano. How are you?

11 MS. STAIANO: I'm well, thank you.

12 THE COURT: Okay. All right. Mr. Stanziale is, you  
13 know, you're here in the morning, you're here in the afternoon.

14 MR. STANZIALE: I should've slept outside.

15 THE COURT: Oh, no. No, no. You're -- I think  
16 you're lending weight to this side of the table.

17 MS. STAIANO: And everybody's getting ready for the  
18 holidays.

19 THE COURT: This courthouse is all geared up for  
20 parties.

21 MS. STAIANO: I'm done with cooking, so I'm  
22 celebrating.

23 THE COURT: All right. We can, just for the moment,  
24 go off the record.

25 (Off the record)

1 MR. SCARPONE: Your Honor, an issue has come up and I  
2 wanted to just discuss it briefly with Mr. Papalia, but there  
3 is some history and some relationship between Judge Cox Arleo  
4 and Mr. Papalia's firm. And apparently this has been the  
5 subject of comment by counsel, that there might be some lack of  
6 complete objectivity, should we say.

7 MR. HIRSCH: When you say counsel, could you identify  
8 the counsel because --

9 MR. SCARPONE: I don't know. It's only been told to  
10 me that it has been mentioned. I wasn't there. What I'm  
11 suggesting, Your Honor, is for that reason, it might be better  
12 if Your Honor did the settlement discussions here.

13 THE COURT: Well, here, I'll leave that up to Judge  
14 Arleo. She can be the best judge of that. I'll do it, but I  
15 won't do it without her weighing in on it and she should -- and  
16 I'll leave it to her good judgment, which I thoroughly trust,  
17 to deal with that issue. What -- and I'm living at hope I'll  
18 adjourn the 13th and 14th. I'll set it out and  
19 re-notice it for the 13th and 14th of February, 9 a.m.  
20 Mariela, would you please get Peggy on board with that  
21 adjournment? Mr. Scarpone, if you would notify all parties of  
22 that adjournment from 13 and 14 of December to 13 and 14 of  
23 February. But, I'm available, and I'll do what the parties  
24 feel is best.

25 MR. SCARPONE: We'll get back to you as soon as

1 possible, Judge. I understand what Your Honor is saying.

2 We'll contact Judge Arleo. I haven't been involved in any of  
3 the discussions there.

4 MR. PAPALIA: Your Honor, if I may, again, on the  
5 record of off the record?

6 THE COURT: Yes.

7 MR. PAPALIA: The thing is, is that, as Mr. Scarpone  
8 says, he's not party to --

9 THE COURT: No, I understand.

10 MR. PAPALIA: -- the district court proceeding. And,  
11 therefore, if, you know, there's an issue, I guess, of standing  
12 or whatever it is, and you know, we have to contact Judge  
13 Arleo, or we will, I know, perhaps maybe the way to deal with  
14 it is that it's a joint settlement conference that, you know,  
15 Judge -- Your Honor is dealing with the fraudulent conveyance  
16 action and the bankruptcy issues, which I'm sure Judge Arleo  
17 would appreciate your expertise, and Judge Arleo is dealing  
18 with the district court. And then, hopefully, you know, it  
19 doesn't have to be both conducting the settlement conference,  
20 but all I'm saying is, that because of procedural issues and  
21 because of substantive issues, I think the expertise of  
22 knowledge of both Courts would be helpful. That's all.

23 THE COURT: All right. Look, you know, I'll do  
24 whatever the parties and Judge Arleo feel makes sense. I don't  
25 know how we're going to do that, you know, on a joint basis,



1 but I'll -- look, I'm mobile. I'll even walk downstairs. I'll  
2 do whatever is necessary. But, I think that -- again, I am not  
3 exactly clear, and I shouldn't be, on how all the parties would  
4 interrelate on a settlement. But, what I'm focusing on now,  
5 not to cut you out of the mix because you appear to be very  
6 important, but some sort of a cooperating agreement between  
7 Merrill Lynch and, perhaps, Chase and the trustee would  
8 streamline the bankruptcy case. And again, if --

9 MR. HIRSCH: Gave you the best possible way to  
10 streamline the bankruptcy case, Your Honor, and you declined,  
11 so what do you want from me?

12 (Laughter)

13 THE COURT: No, I appreciate it. Okay. Short of the  
14 bankruptcy court going out of business, having said that,  
15 anything else? So, it's both motions are denied, short forms  
16 of order would be in order submitted by either side -- the  
17 winning side in each case. Anything else? All right. Thanks  
18 a lot. If I don't hear from you have a good holiday. Enjoy,  
19 relax, take care.

20 \* \* \* \* \*

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C E R T I F I C A T I O N

I, KATHLEEN BETZ, court approved transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter, and to the best of my ability.

/s/ Kathleen Betz

DATE: January 22, 2008

KATHLEEN BETZ

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